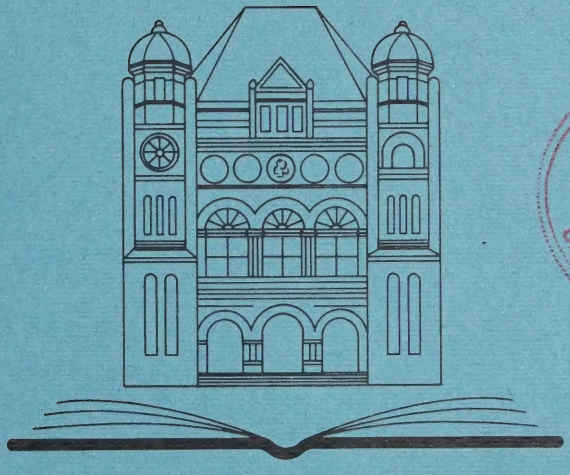
# THE DRAFT REPORT OF THE COMMISSION ON PLANNING AND DEVELOPMENT REFORM IN ONTARIO (THE SEWELL COMMISSION)

*Current Issue Paper 137*





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# THE DRAFT REPORT OF THE COMMISSION ON PLANNING AND DEVELOPMENT REFORM IN ONTARIO (THE SEWELL COMMISSION)

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# INTRODUCTION

On June 12, 1991, Dave Cooke, then Minister of Municipal Affairs, rose in the Legislature to announce that the government had established a Commission on Planning and Development Reform with a broad mandate to investigate land-use planning in the province and to recommend changes to the *Planning Act*. Mr. Cooke indicated that the government was concerned about the problems caused by urban sprawl and unchecked land development. He expected the Commission to consult widely with the public, providing concrete answers to these problems in a final report to be completed within two years.[1]

The minister appointed John Sewell, former Mayor of the City of Toronto and a longtime student of urban affairs, as chair of the Commission. Also named as commissioners were Toby Vigod, a prominent environmental lawyer, and George Penfold, a professor in the University School of Rural Planning and Development at the University of Guelph.

The Commission released its *Draft Report* late in December 1992. An ambitious proposal for substantial reform, the document is more than 90 pages long and contains 94 recommendations. The *Report* has sparked strong reaction from municipalities, developers, environmentalists and other interested groups. The *Globe and Mail* described it as "nothing less than a blueprint for redesigning Ontario. Not since the first ragtag bands of surveyors dragged their chains across the Upper Canadian wilderness has anyone proposed such radical surgery to the province."[2] Morley Kells, a former cabinet minister and current president of the Urban Development Institute, has suggested that regardless of whether the *Draft Report* becomes law, it is a "monumental piece of work" which "will be taught in schools for 10 years."[3]

This Current Issue Paper outlines the principal findings and recommendations of the *Draft Report*; includes some commentary by Mr. Sewell from his appearance before the Standing Committee on Government Agencies on February 2, 1993; and closes with a brief discussion of public reaction to the *Draft Report*.

## PREPARATION OF THE DRAFT REPORT

The Commission consulted widely in the preparation of its report. In the fall of 1991 it assembled six working groups, each composed of 15 to 20 participants representing a wide variety of interests, to discuss planning policies. The ideas put forward by these working groups were published in the Commission's newsletter, *New Planning News*, and were discussed at forums held early in 1992. A second draft of goals and policies, published in the spring issue, was the subject of an extensive round of hearings and meetings at 28 centres across the province in 1992. The Commission estimates that it has spoken with about 20,000 people at public meetings, discussions, conferences and workshops across Ontario.

The *Draft Report* will be subject to another round of public hearings early in 1993, and the Commission intends to submit its final report to the Minister of Municipal Affairs in May.

## PROVINCIAL ROLE IN PLANNING

The report's central argument is that the province should be responsible for setting out a clear, comprehensive policy framework for land-use planning, and that this policy must be binding on all municipalities. However, within this framework, municipalities should have more planning powers. In the words of commissioner Toby Vigod:

> The province should speak mainly through policy. The policy should be clear, understandable [and] not the size of the telephone book but it should protect provincial interests and provide a framework for municipal planning.[4]

## The Planning Framework

Currently the *Planning Act* does not have a statement of purpose. The Commission therefore recommends that the Act be amended to state that the purposes of the statute are:

- to protect and conserve the natural environment and foster the well-being of ecosystems for the benefit of present and future generations;
- to foster economic, cultural, physical and social well-being;
- to provide for planning processes which are fair, open, accessible, accountable and efficient; and
- to encourage cooperation and coordination among differing interests.

Under the *Planning Act* (s. 3), the Minister of Municipal Affairs (acting alone, or together with any other minister) may issue "policy statements," which have been approved by cabinet, on matters relating to municipal planning. Authorities such as the Ontario Municipal Board (OMB) are required to "have regard to" such statements when making decisions. Four such policy statements have been issued by various provincial governments, on Flood Plain Planning, Land Use Planning for Housing, Mineral Aggregate Resources, and Wetlands.

The Commission recommends that the province should adopt a comprehensive set of policy statements in the areas of Ecosystem Protection and Restoration, Community Development, Housing, Agricultural Land, Conservation, and Non-renewable Resources. The purpose of these statements "is to remove uncertainty so that those involved in municipal plan-making and those making development applications will know what would be acceptable under provincial policy."[5]

Provincial policy statements should have greater force in law to ensure they are heeded by all provincial and municipal authorities including the OMB. The courts have interpreted the phrase "have regard to" in the *Planning Act* to mean only that a

decision-maker cannot dismiss a policy statement out of hand. This language should be strengthened to read that actions taken by any planning authority or decision-maker shall "be consistent with" the policy statements.

**The Decision-Making Process**

The Commission recommends that the province establish the following policy-making mechanisms:

1) A Provincial Planning Advisory Committee (PPAC) should be created, composed of 15 to 20 persons representing the diverse interests of the planning system. The principal responsibilities of this Committee should be:

   - to review requests for policy and planning proposals from the Minister, the public, and other interested parties;
   - to recommend to the Minister an annual agenda of policy and planning priorities for the Committee;
   - to direct the preparation of background studies;
   - to direct public consultation on policy and planning matters;
   - to review the results of the public consultation and provide feedback to the public on the recommendations made and how public input was considered; and
   - to make recommendations to the Minister for provincial policies and plans.

2) An Interministerial Planning Committee (IPC) should be created, consisting of deputy ministers from the ministries having a direct interest in planning: Municipal Affairs, Environment, Natural Resources, Housing, Agriculture and Food, Transportation and Treasury. The principal responsibilities of the IPC should be:

   - to coordinate policy and planning activities among ministries;
   - to arrange for appropriate staff resources and information to support the work of the PPAC;
   - to work with the PPAC in preparing proposed polices and plans; and

- to advise the Minister of Municipal Affairs and other ministers on policy and planning matters.

3) A Ministry of Municipal Affairs and Planning should be created. This Ministry would assume the lead responsibility for provincial policy-making and planning. The principal responsibilities of the Ministry should be:

    - to administer legislation for land-use planning and related matters;
    - to coordinate provincial activities regarding policies and planning for land-use and related matters;
    - to resolve interministerial issues regarding these matters; and
    - to work with the PPAC.

Mr. Sewell has said that the Commission proposes the creation of these new policy-making mechanisms in order "to create a link between the three interests that are there: the cabinet, the public, the bureaucracy. We think there's a gulf right now between those three."[6]

**New Provincial Responsibilities**

The *Draft Report* suggests that the province should assume the following responsibilities:

- Ministries should be prepared to advise municipalities on how to translate provincial policies into municipal plans, handle difficult development matters, judge the adequacy of technical studies, and related matters. This advisory role should include reviewing proposed municipal official plans at the preparation stage.
- The province should collect, interpret and publish various kinds of useful information, such as satellite mapping and well-water data.
- The new Minister of Municipal Affairs and Planning should be granted the following powers under the *Planning Act*:
    - the Minister (as well as other ministers) should be permitted to appeal any municipal planning decision to the OMB;

- the Minister should have the power to impose an interim holding order in any case and on any site or area where there is a provincial interest not addressed by an existing provincial policy, and where that interest will not be protected unless the Minister intervenes;

- the Minister should be empowered to place a zoning order on any site or area without local zoning controls where there is a provincial interest which will not otherwise be protected; and

- the Minister should be allowed to remove plan approval and lot-creation authority from a municipality or planning board where there has been a series of local planning decisions indicating that approvals have been granted contrary to provincial policy statements or which do not conform to the municipal official plan, or where reasonable planning administration is no longer in place to process applications.

The Commission also recommends that the Minister should no longer be allowed to issue declarations of provincial interest under the terms of the *Planning Act.* Such declarations provide that OMB decisions are not final and binding until approved by cabinet. The intent of this reform is to enhance the status and authority of the Board.

Additional recommendations concerning the provincial planning role include: reforms to the granting of permits and licences; the creation of a Development Standards Committee to propose a set of development standards for the guidance of municipalities; and a restructuring of the provincial grant and subsidies programs to encourage municipalities to focus on some of the priorities set out in the *Draft Report.*

## MUNICIPAL ROLE IN PLANNING

### Background

According to the Commission, there are 831 municipalities in Ontario. In most of southern Ontario, these are organized into a two-tier system of government with 27 counties and 11 regions at the upper tier, and numerous towns, townships, villages and cities at the lower. As well, there 21 separated or independent cities and towns

and one separated township which, although located in 16 counties, are outside the political structure of the county.

Two-thirds of the counties do not have official plans, nor do two of the province's fastest growing regions, York and Peel. According to the Commission about 80% of the lower-tier municipalities have a population of less than 5,000, and consequently have limited resources to undertake planning.

Half the 800,000 residents in northern Ontario live in five cities and in the Regional Municipality of Sudbury. Most of the rest are scattered in 180 small communities, the majority of which have fewer than 5,000 residents. Another 50,000 people live in areas without municipal organization. Twenty-two planning boards in the north cover some municipalities and unorganized areas.

**Municipal Planning Responsibilities**

The Commission argues that good planning requires a clear and reasonable distribution of planning responsibilities. It recommends that the *Planning Act* be amended to demarcate clearly the respective planning responsibilities of upper- and lower-tier municipalities.

The Act should provide that upper tiers be responsible for lot creation and condominium plans, and that they develop official plans which coordinate region-wide matters such as water, transportation, sewage treatment, jurisdictional boundaries, conservation issues and settlement patterns. The lower tiers should be responsible for preparing detailed plans covering such issues as site-plan control, detailed zoning, minor variances, local patterns of land use and settlement, and areas of mandated local responsibility such as fire protection and the character of the community such as heritage, streetscape and physical design. All lower-tier plans must conform to upper-tier plans.

The Commission argues that regional municipalities without an official plan should be required to adopt one within three years of the introduction of an amended *Planning Act*. After this period, the negligent regions should be subject to penalties such as imposed limits to capital borrowing and ineligibility for certain grants.

Counties and planning boards should adopt a plan within five years of the introduction of an amended *Planning Act*, after which time they would be subject to penalties.

**The Principles of Municipal Planning**

Strategic Planning

The *Draft Report* recommends that upper-tier municipalities be encouraged to engage in what the Commission describes as strategic planning. A strategic plan is different from an official plan: it should set priorities for initiatives the municipality wishes to take and focus on ways in which the municipality might influence the relevant players; it should provide coherence for municipal policies and actions; and it should not be legally enforceable or appealable to the OMB.

Official Plans

A number of principles underlying municipal official plans are so important they should be embodied in the *Planning Act*. They are:

- municipal plans must be consistent with provincial policy;
- counties, regions, separated municipalities, northern cities and planning boards should be required to prepare and adopt a plan for the entire area for which they are responsible;
- lower tier plans must be conformable with upper tier plans;
- municipal plans must be based on appropriate studies;

- the planning process must include a review of alternatives for such matters as growth, settlement patterns, and infrastructure, and analysis of the effects of the alternatives on the natural, social, cultural and economic environments;
- issues should be analyzed on a geographic basis, even where this extends beyond the jurisdiction of the municipality;
- where necessary, municipalities should cooperate to handle joint problems;
- all steps followed in developing a plan must be documented;
- in preparing plans, there must be full public consultation; and
- plans should contain goals for the future.

Under the terms of the new policy statements provincial approval of municipal plans would not be necessary, except in the case of first plans produced by upper-tier municipalities, separated municipalities, cities and planning boards in the north. This would be a significant change in the status quo, since the province now exercises considerable influence over municipal planning and the content of municipal plans under the terms of the *Planning Act*. For example, municipal plans do not go into effect until they are approved by the Minister of Municipal Affairs, who may amend the plan at his or her discretion. The Minister may also direct a council to amend its plan at any time.

## Amending Official Plans

The Commission argues that official plans are amended too often, thereby failing to provide stability or to act as guides for the future. Too often, the official plan is merely a complicated device for controlling site-specific development.

Municipalities should be permitted to set a specific time during the year when applications to amend the official plan will be received, so long as that time period comprises at least 10 working days per year.

## Development Control

A number of recommendations are made under this heading, including:

- Design guidelines should be explicitly authorized in the *Planning Act*. They would describe, within a defined area such as a downtown, the desired relationship of buildings to one another and to the street.

- Lot-creation, rezoning and development permit applications which might have an environmental impact should be accompanied by an environmental impact statement.

- The *Planning Act* should be amended to allow municipalities to adopt a development permit process and delegate permit approvals to staff, subject to certain conditions.

- A sunset provision should be included in all subdivision agreements so that the allocation of sewage and water capacity may be recalled and reallocated.

- Ad hoc, site-by-site bonusing, whereby the municipal council grants a developer a desired benefit in exchange for some concession such as a park, should not be allowed. However, municipal councils should be allowed to permit transfer of densities if the official plan states the purposes of such transfers and establishes geographical limits for development areas where land values are comparable.

- Municipalities should be empowered to control the alteration of sites, whether by grading, dumping, tree cutting, or removal of top soil or other materials such as peat.

- The procedures for processing minor variances should be streamlined. Appeal periods should be shortened and minor questions assigned to staff.

## Municipal Infrastructure

The Commission recommends that the review of certain municipal infrastructure projects be moved from the *Environmental Assessment Act* into a class environmental process under the *Planning Act*. These projects would be identified using the following criteria:

- they are recurring;
- they are similar in nature;
- they are limited in scale;
- they have only a predictable range of environmental effects; and
- they respond to standard mitigation measures.

The environmental assessment document prepared for these plans would continue to be developed and approved under the terms of the *Environmental Assessment Act* by the Minister of the Environment. Final decisions about projects could not be made by councils until the assessment process was complete. The applicability of the process to a particular project should be appealable to the OMB.

Public Participation

The Commission argues that the public should have greater opportunities to participate in the planning process. It makes a number of recommendations which would require municipalities to ensure all interested parties are made aware of impending decisions by council. Public meetings to discuss official plans, plan amendments and comprehensive zoning by-laws should be mandatory. The Commission sets out notice periods for different classes of planning decisions which all municipalities should be required to respect.

**Planning in the North**

The *Draft Report's* recommendations under this heading apply to small northern municipalities and unorganized areas. It recommends that planning boards be established or expanded in the north to cover the existing small municipalities and adjacent unorganized areas. The jurisdiction of these boards should, wherever possible, reflect watershed boundaries to enable effective planning for the protection of the natural environment. Consideration should also be given to the already existing

boundaries of school boards, economic development committees and other local organizations.

The planning boards should be funded by their participating municipalities and empowered to levy and collect funds in unorganized areas in the same manner as boards of education, and should be allowed to set licence, permit and user fees.

## THE ONTARIO MUNICIPAL BOARD

Although the Commission found broad support for the OMB in its public consultations, it also uncovered a general concern about a problem of backlog (according to the Commission, it takes 12 to 18 months to schedule a hearing before the Board). The Commission therefore recommends that reforms should be introduced to streamline the appeals process. It rejects the idea of reducing the OMB's jurisdiction or limiting the right to appeal to the Board. The Commission also argues the OMB must not become more inaccessible to interested parties. Furthermore, imposing conditions and limits on the right to appeal would likely lead to further delays as the parties before the Board would engage in arguments about whether the grounds of appeal had actually been met.

Throughout the *Draft Report* the Commission emphasizes that appeals to the OMB will be reduced if the province agrees to establish a comprehensive mandatory policy framework for land-use planning. The result will be greater certainty both about the content of planning law and about governments' intentions with respect to development. In turn this will reduce disputes about policy and appeals to the OMB. Other Commission recommendations that should reduce the need for appeals include withdrawing the province from approving amendments to municipal plans once the first plans under the new policy statements are approved, and a smaller number of amendments to municipal plans.

The Commission offers the following recommendations for making the OMB more efficient:

- A notice of appeal should state the reasons for appeal, so that a reasonable understanding of the matters in dispute can be gained from the document itself.

- To ensure a common base of information about the issues involved in an appeal, the municipality should be encouraged to convene a meeting of the appellant(s) and other participants who have an interest in the appeal to discuss the issues.

- Regarding minor variances and site plans, the OMB should consider bringing the parties together for a meeting to explore settlement options. (This approach is now being tried for certain selected appeals of minor variances, and it has been found that 70 to 80% of these cases are settled).

- For appeals of plans, zoning by-laws, and lot creation, it should be standard procedure for the Board to convene a procedural meeting within 30 days of receiving the appeal. At this meeting the parties would explore the issues, exchange information, and endeavour to narrow the issues in dispute. If the Board concludes that a settlement is possible without a full hearing, it should appoint a mediator to assist the parties to reach a settlement.

Mr. Sewell believes that adopting the mediation and alternative dispute resolution techniques outlined above will have a substantial impact on the Board's workload. He predicts that the number of cases before the Board requiring a protracted hearing will be reduced substantially. Instead, there may be an increase in the number of hearings which can be resolved expeditiously: within two or three days.[7]

Other recommendations affecting the OMB include:

- unincorporated associations should be allowed to appeal to and appear before the OMB;

- the Board should be empowered to impose monitoring and other conditions designed to protect the environment on the parties to a decision;

- OMB decisions should not be referred to cabinet for any reason; and

- where an objection to a municipal or an area plan or to a comprehensive zoning by-law is site-specific, the appeal should be deemed to apply only to the property affected, and the Board should have the power to approve the rest of the document.

The Commission also recommends that more training in environmental issues and dispute resolution techniques be made available to Board members.

**Intervenor Funding**

The Commission recommends that intervenor funding be introduced for appeals to the OMB. The Board should be empowered to award intervenor funding in relation to issues which, in its opinion, affect a significant segment of the public and concern public—and not just private—interests.

A funding panel of the OMB should be established to adjudicate applications for intervenor funding. The panel should consider whether:

- the intervenor represents a clearly ascertainable public interest that should be represented at the hearing;
- separate and adequate representation of the interest would assist the Board and contribute to the hearing;
- the intervenor does not have sufficient financial resources to enable it to present the interest adequately;
- the intervenor has made reasonable efforts to raise funding from other sources;
- the intervenor has demonstrated concern for this issue at the municipal level;
- the intervenor has attempted to join together with other objectors;
- the intervenor has a clear proposal for the use of the funds; and
- the intervenor has adequate financial controls to ensure that the funds are appropriately spent.

The funding panel should determine the appropriate source of the intervenor award, whether that be the proponent, a municipality, the province or a government agency. Until an amended *Planning Act* implementing this recommendation is passed, the province should make $500,000 available annually for intervenor support.

## PLANNING AND ABORIGINAL COMMUNITIES

The Commission points out that many Aboriginal communities are located adjacent to municipalities. However, in general there appears to be little communication between municipalities and Aboriginal communities regarding land use issues. Requirements for notification in the *Planning Act* make no specific reference to Aboriginal communities. Municipalities generally regard land claims to be a federal or provincial concern, and do not take them into account in their planning activities.

The following recommendations are designed to improve communication between Aboriginal communities and municipalities. They are to be regarded as interim steps as Aboriginal self-government unfolds.

- Aboriginal communities should be included wherever there is a specific requirement in the *Planning Act* to notify an adjacent owner or municipality.
- Municipalities and planning boards should be specifically authorized under the Act to enter into agreements with Aboriginal communities.
- A protocol or agreement should be developed by the province to ensure that notice of development proposals or changes in the tenure of provincially owned lands would be given to Aboriginal communities.
- Where planning board jurisdictions are adjacent to Aboriginal communities or lands, or where they include lands on which there is a land claim, the *Planning Act* should provide an opportunity for Aboriginal representation.

## REACTION TO THE DRAFT REPORT

John Sewell has suggested that people see "various dragons . . . leaping out of [the report's] pages." For some provincial public servants, the dragons are municipal councils, who cannot be trusted to get planning right. For municipal politicians, on the other hand, the dragon is the province with its heavy-handed interference in local affairs, which will be exacerbated if the proposed policy statements are adopted. For some developers, the dragons are the environmentalists, and they accuse the

Commission of unduly emphasizing the protection of the environment at the expense of development. But for some environmentalists, the dragon is the development industry, which the Commission has allegedly failed to curb in its proposed recommendations. Mr. Sewell contends that the *Draft Report* represents "a fair balance of interests. . . . The dragons," he says, "are interesting, but I'm not sure they're real."[8]

The sharpest criticism of the *Draft Report* has come from rural politicians around the province. Their ire is directed at the proposed policy statements on Ecosystem Protection and Restoration and Community Development. Under the former statement, development would be heavily restricted, or forbidden outright, on significant ravines, river valleys, streams, woodlots and wetlands. Under the latter, development would be concentrated in areas already serviced by public sewage systems; development in communities and areas not already serviced by public sewage would be substantially restricted. The intent of these statements is to protect the environment, discourage urban sprawl, and encourage intensification in existing communities. The Commission's critics argue that the policy statements would unfairly discourage economic growth in rural Ontario, discriminate against rural Ontarians, encourage speculative increases in the real estate value of existing serviced lots in rural areas (on the grounds that their market value will increase once further development is restricted), and ignore the reality that many rural communities depend on private wells and septics because they cannot afford to build a public sewage system. The critics also point out that many rural counties cannot afford to hire the planners to conduct the studies and draw up the official plans called for by the Commission. Mr. Sewell has also conceded that the Commission's recommendations for upper-tier municipalities will pose a challenge for the less wealthy municipalities.[9]

As noted above, the Commission has just launched another round of public meetings to hear what Ontarians have to say about its *Draft Report*. It is premature to speculate on whether or how the Commission will amend its *Report* in response to public commentary, or what the reaction of the government and the Legislature will be to the final version. But it is safe to say that the *Draft Report* of the Sewell

Commission has become the focus for debate in Ontario about the future of land-use planning and the shape of our communities.

## FOOTNOTES

[1] Ontario, Legislative Assembly, *Hansard: Official Record of Debates*, 35th Parliament, 1st Session (12 June 1991): 1884.

[2] John Barber, "Is it curtains for the suburban dream?," *Globe and Mail*, 14 January 1993, p. D3.

[3] Ibid.

[4] "Critics say rural Ontario will reject planning report," *Brantford Express*, 7 January 1993, p. A4.

[5] Ontario, Commission on Planning and Development Reform in Ontario, *Draft Report* (Toronto: Queen's Printer for Ontario, 1992), p. 21.

[6] Ontario, Legislative Assembly, Standing Committee on Government Agencies, *Hansard: Official Record of Debates*, 35th Parliament, 2nd Intersession (2 February 1993): A-413.

[7] Ibid., pp. A-397-398.

[8] Ibid., p. A-409.

[9] Ibid., pp. A-404-405.